IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 33624 of 2007(C)
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LAR.5/2002 of SUB COURT, HOSDRUG
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PETITIONER:
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MOILAKILATH LAILA, D/O.C.H.MOHAMMED,
RESIDING AT CHETTUKUND, CHITTARI VILLAGE,
HOSDURG TALUK.

BY ADV. SRI.SURESH KUMAR KODOTH
SMT.V.SETHUKUTTY AMMA

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR (LA),
KASARGOD.

2. BRDC REPRESENTED BY ITS MANAGING
DIRECTOR, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SMT.R.BINDU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007 ALONG WITH WP(C) 33625/07, ETC., THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**M.N.Krishnan, J.**

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**W.P(C).Nos.33624/07, 33625/07, 33626/07, 33627 & 33628/07**

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**Dated this the 14th day of November, 2007.**

**JUDGMENT**

These Writ Petitions are filed against the award passed by the Land Acquisition court, Hosdurg in L.A.R.Nos.5/02, 6/02, 8/02, 7/02 and 4/02 respectively. In all these matters, the claimants moved applications for removing the cases from the special list and they were dismissed. Since the claimants did not adduce any evidence, the court answered the reference against the claimants. Dissatisfied with the same the claimants moved applications under Order 9 Rule 9 of C.P.C. to restore the land acquisition cases. The Apex Court in the decision reported in **Khazan Singh** v. **Union of India** - 2002 1 K.L.T. 644 SC has held that the civil court has to pass award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because

an award would be passed perhaps to the detriment to the concerned party. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default. So, in the light of this pronouncement, the question of restoring the land acquisition cases does not arise at all because the court has no power to dismiss the case for default.

2. When it is so, there is a duty cast upon the Land Acquisition Court to apply its mind on the materials available and pass an award in accordance with the provisions of law. Mere mechanical confirmation of the award passed by the reference court cannot be permitted in the light of the fact that the court is not empowered to dismiss a case for default. It has to be sated that the court is bound to apply its mind and pass a considered award and that the parties shall not be forced to spent court fee and file an appeal. In the decision reported in **Krishna Pillai** v. **State of Kerala** - 2007(2) K.L.T. 588, inherent power under Article 227 of the Constitution of India was exercised and the matters were restored to file. I do not find any reason to deviate from the said principle. Therefore, exercising the supervisory jurisdiction under Article 227 of the Constitution of India and in

order to do justice to the parties, I direct the Land Acquisition Court to restore all the land acquisition cases back to file and dispose of the matter in accordance with law after affording equal opportunities to both parties. I also make it clear that if there had been serious laches on the part of the claimants in these cases, the question of interest whether they are entitled to in between the date of answering the reference against them and restoration shall be considered by the court and disposed of accordingly.

Writ Petitions are disposed of accordingly.

M.N.Krishnan,
Judge.

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